

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FELIX BAEZMORALES,

Plaintiff,

vs.

THE DEPARTMENT OF
CORRECTIONS, AIRWAY HEIGHTS
CORRECTIONAL FACILITY and
DR. LORANGER,

Defendants.

NO. CV-07-223-FVS

ORDER DISMISSING ACTION

1915 (g)

By Order filed April 17, 2008, the court directed Mr. Baezmorales to show cause why his complaint should not be dismissed as set forth in the Order dated September 27, 2007 (Ct. Rec. 27). Plaintiff did not comply.

On September 27, 2007, the court had advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss the complaint within sixty (60) days. Plaintiff, a prisoner at the Airway Heights Correction Center, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Mr. Baezmorales has filed nothing further in this action.

In his complaint, Plaintiff named Defendants who are not amenable

1 to suit under 42 U.S.C. § 1983. Furthermore, his claim of "mental
2 injury" was not accompanied by a showing of physical injury. See 42
3 U.S.C. § 1997e(e); *Oliver v. Keller*, 289 F.2d 623, 630 (9th Cir.
4 2002). Also, his claim of medical negligence was insufficient to
5 support a cause of action under the Eighth Amendment. *Broughton v.*
6 *Cutter Lab*, 622 F.2d 458, 460 (9th Cir. 1980).

7 Although granted the opportunity to amend his complaint to
8 correct these deficiencies, Plaintiff has not done so. Accordingly,
9 **IT IS ORDERED** the complaint is **DISMISSED with prejudice** for failure to
10 state a claim upon which relief may be granted under 28 U.S.C. §§
11 1915(e)(2) and 1915A(b)(1).

12 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
13 prisoner who brings three or more civil actions or appeals which are
14 dismissed as frivolous or for failure to state a claim will be
15 precluded from bringing any other civil action or appeal *in forma*
16 *pauperis* "unless the prisoner is under imminent danger of serious
17 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**
18 **the new statutory provisions under 28 U.S.C. § 1915. This dismissal**
19 **of Plaintiff's complaint may count as one of the three dismissals**
20 **allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to**
21 **file future claims.**

22 **IT IS SO ORDERED.** The District Court Executive is directed to
23 enter this Order, forward a copy to Plaintiff at his last known
24 address, enter judgment, and close the file. The District Court
25 Executive is further directed to forward a copy of this Order to the
26 Office of the Attorney General of Washington, Criminal Justice
27

1 Division.

2 **DATED** this 3d day of June 2008.

3
4 s/ Fred Van Sickle
5 FRED VAN SICKLE
6 SENIOR UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27